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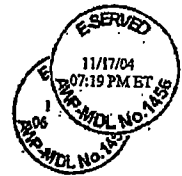
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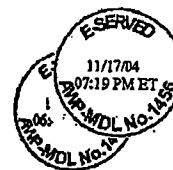
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# Exhibit 8

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re: Pharmaceutical  
Industry Wholesale Price  
Litigation

Docket No. 01-12257-PBS

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MARIANNE B. BOWLER  
UNITED STATES MAGISTRATE JUDGE  
HELD ON JANUARY 27, 2005

APPEARANCES:

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P R O C E E D I N G S

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1  
2 THE CLERK: Today is Thursday, January 27, 2005. The  
3 case of Citizens for Consumer Justice, et al v. Private  
4 Laboratories, et al, Criminal Action No. 01-12257 will now be  
5 heard before this Court. Will counsel please identify  
6 themselves for the record?

7 MR. MANGI: Your Honor, Adil Mangi from Patterson,  
8 Belknap, Webb & Tyler for defendants. I'll be arguing the  
9 motion to compel Health Net.

10 THE COURT: Thank you.

11 MS. CICALA: Good morning, your Honor. Joanne Cicala  
12 from Kirby McInerney & Squire, for plaintiff, the County of  
13 Suffolk, here on the discovery motion.

14 MR. MCGINTY: Good morning, your Honor. Kevin  
15 McGinty from Mintz Levin for Health Net, respondent to the  
16 motion to compel.

17 MR. SELFRIDGE: Good morning, your Honor. Lance  
18 Selfridge from Lewis Brisbois Bisgard & Smith in Los Angeles  
19 also here on behalf of Health Net. I understand that  
20 Mr. McGinty has a motion for pro hac vice admission for me.

21 THE COURT: Okay. And that motion will be allowed.

22 MR. SELFRIDGE: Thank you, your Honor.

23 THE COURT: Has it been filed or are you just--

24 MR. MCGINTY: I have it here, your Honor, with the  
25 filing fee as well.

1 THE COURT: Okay. Oh, we always want the money. 4

2 MR. MCGINTY: Yes. I've learned from said experience  
3 so, I will hand it up now.

4 THE COURT: All right, that's fine.

5 MR. SELVICH: Thank you, your Honor.

6 THE COURT: You're welcome.

7 MR. CHRISTOFFERSON: Good morning, your Honor. ERIC  
8 Christofferson from Ropes & Gray, on behalf of Schering-Plough  
9 Corporation.

10 THE COURT: Thank you, very much.

11 MR. NOTARGIACOMO: Good morning, your Honor. Edward  
12 Notargiacomo from Hagens, Berman on behalf of the Class MDL  
13 plaintiffs. I don't have any particular motion. I'm just here  
14 in case there are questions that need to be answered.

15 THE COURT: Mr. DeMarco, do you want to be noted on--  
16 the record.

17 MR. DeMARCO: And, your Honor, I am Michael DeMarco  
18 as you know, and I'm here with my colleague Jim Muehlberger.

19 MR. MUEHLBERGER: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. DeMARCO: I'm with Kirckpatrick & Lockhart,  
22 Nicholson Graham. And Jim is with Shook, Hardy & Bacon from  
23 Kansas City and he represents Aventis, an interested party, the  
24 defendant in the class action.

25 THE COURT: All right.. Well, we'll take the two, the

1 motions in the order in which they were filed. So the first  
2 is docket entry number 1175, which is defendants' motion to  
3 compel third party Health Net to produce with opposition.

4 MR. MANGI: Thank you, your Honor. As your Honor is  
5 aware, Judge Saris allowed the defendants to proceed with  
6 discovery of a sample of health insurers in the industry.  
7 Health Net is a key part of that industry sample. Primarily  
8 because of their geographical reach, they operate on both  
9 coasts, both coasts, but also because they have an internal PBF  
10 which renders them particularly of interest to defendants.  
11 This motion is before your Honor on two specific issues.

12 First of all, Health Net has produced about half a  
13 box of documents. That came after about a year worth of  
14 negotiation on the subpoena and the scope of production. But  
15 all of the documents that were produced were redacted. In  
16 fact, they were redacted of all terms that would be useful to  
17 defendants in this case. All reimbursement methodologies were  
18 redacted. All dispensing fees or administration fees were  
19 redacted. The same for financial terms, even the names of  
20 contracting parties, - (inaudible #11:04:07) - were essentially  
21 shell contracts, worthless paper or templates. That's the  
22 first and the primary issue for this motion.

23 The second is there were certain very limited  
24 documents that were identified by Health Net's witnesses at  
25 depositions as being central to this case. We sought their

1 production after the deposition, and again these were very 6  
2 specific categories of documents, and Health Net has refused to  
3 produce them without giving any reason for that refusal. Now,  
4 on the issue of redactions, Health Net's only reason for not  
5 producing these documents in their unredacted form, and again  
6 it's half a box so far, is that they have confidential  
7 information and Health Net's taken that position despite the  
8 fact that their protective order is in place. So what Health  
9 Net is seeking here is unique status in this litigation. All  
10 the other health plans that are part of the industry sample  
11 have produced their documents in unredacted form providing all  
12 of this information, the methodology, the dispensing fees, and  
13 so on, the defendants seek. Health Net claims that they should  
14 be given unique status and allowed to keep their information  
15 confidential and that the protective order is not sufficient.  
16 Now, I will point out that Judge Saris in CMO 10  
17 already made a ruling on the issue of redaction and said in  
18 that order, which is appended to our the papers, the redaction  
19 should only be allowed on the grounds of privilege. Now, that  
20 order was by its terms addressed to parties, but the logic is  
21 equally applicable here, given that the same protective orders  
22 protect the interest of third parties as parties. Now, Health  
23 Net in their papers have made a lot of human cry about the  
24 relevance of these methodologies. We've discussed that with  
25 them on numerous occasions. We've even sent them letters, many

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1 letters, expressing why the information is relevant, but I'll 7  
2 address it here very briefly by giving just a few examples. As  
3 your Honor is aware, the plaintiff's in the MDL, are now  
4 focused on a theory performed by the expert Dr. Hartman which  
5 pertains to the expectations of pairs alleging a common  
6 expectation of cost classes of trade. The only way the  
7 defendants can test that theory is by reference to the  
8 methodologies that are actually being used. If they're  
9 different methodologies, different classes of trade or even  
10 different entities within classes of trade, defeats those  
11 common expectations. Similarly, another issue that's going to  
12 be critical to the merits is the defendant's position that  
13 these contracts have to be looked at on an overall basis. You  
14 have to look at the bundle of services that are being provided  
15 and the bundle of payments that's being given. You can't  
16 compare the bundle if you don't know what the terms are. You  
17 can't compare methodology and dispensing fee and see their  
18 interrelationship of all the terms, if you don't know what any  
19 of those terms are. And there are numerous other factors that  
20 show the relevance of this. As your Honor's aware, we've put  
21 in experts' submissions that have scattered thoughts showing  
22 different reimbursements for different drugs. Health Net has  
23 testified about different methodologies they use. Fee  
24 schedules, for example, you can only assess them if you know  
25 what they're based on. So that information is simply central

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1 to our claims.

2 Now, the only law that Health Net has cited for their  
3 position which we consider unique is the Vitamins case from the  
4 Southern District of Ohio, but as we point out in our reply  
5 papers that that case has no application here. The court there  
6 expressed concern over confidentiality, but that was because  
7 the party there that was seeking the discovery was a direct  
8 competitor of the party that was making production. Here,  
9 there is no such relationship between the defendant  
10 manufacturers and Health Net. Moreover, the issue of  
11 confidentiality was not dispositive in the Vitamins case. The  
12 court expressly said so, and in fact, invited the party to  
13 reserve the subpoena. They didn't rule on the subpoena in  
14 Vitamins because it was premature. There were motions to  
15 dismiss pending. The court said if you win the motion to  
16 dismiss, the issue goes away, so let's wait and see what  
17 happens there. So again, they're seeking entirely unique  
18 status here.

19 Secondly, that issue of redactions also feeds into  
20 claims data. We've sought claims data from Health Net as we  
21 had from numerous insurers. We've already used a lot of that  
22 claims data, and with all health insurers, we've offered to pay  
23 for it. Health Net here raises a few additional arguments  
24 which we submit are just red herrings. They raise the HIPA  
25 statute. There is a precise HIPA regulation on point that

1 allows disclosure where there's a subpoena and a HIPA  
2 compliant protective order in place. The defendant's haven't  
3 even stood on that. We've said okay, you can redact or rather  
4 you can replace patient identifying information with dummy  
5 numbers as long as they're consistent so we can carry out our  
6 analysis. So we don't care what the names of the individual  
7 patients are. We just want to be able to relate them to the  
8 claims so we can study what was paid in relation to specific--

9 THE COURT: What's wrong with doing that, counsel?

10 MR. MCGINTY: In fact, your Honor, if it is possible  
11 to run some kind of algorithm as they suggest that would  
12 scramble the patient identifiable information, I expect that  
13 it's probably not going to be a problem. As counsel indicated,  
14 the problem really comes with embedded in claims data is the  
15 confidential business information concerning dollar value of  
16 reimbursement terms.

17 THE COURT: Okay, so the--

18 MR. MANGI: Your Honor, the only thing I'll add on  
19 claims data is that Health Net, in two letters that are before  
20 your Honor have already agreed that the scrambled algorithm  
21 which we've used with other insurers already and it works fine,  
22 will satisfy all of their patient confidentiality concerns, so  
23 that issue we submit is straightforward.

24 Now, the other aspect of this motion pertains to  
25 documents identified at deposition. After the depositions, we

1 sent a letter to Health Net on October 15, 2004 identifying 10  
2 the specific documents that the witnesses talked about. These  
3 again are very specific. Some of them are as simple as  
4 missing pages with bates numbers to be provided. Somehow, they  
5 dropped out of the production. Please give them to us, have  
6 nothing in response despite numerous letters. Some of them are  
7 slightly more substantive. For example, in narrowing our  
8 production, and as I mentioned, Health Net's only produced half  
9 a box because we narrowed it so extensively. We only sought  
10 representative samples of contracts rather than all contracts.  
11 We told Health Net that we would test the representative nature  
12 of the sample at depositions in relation to, for example, the  
13 retail pharmacy contracts between Health Net or the internal  
14 PBM and the pharmacies. Health Net gave us one 2004 template  
15 contending it was representative of all their contracts since  
16 1991. Other health plans, some have produced five, some have  
17 produced five boxes. One is rarely going to do. We asked the  
18 witness at deposition is this representative? He said, no,  
19 it's not. Now, their contracts are again very specific.  
20 There's a mail order contract that was referenced. We asked for  
21 it. They mentioned the production of documents in a related  
22 AWP litigation, already produced. We asked for those.

23 THE COURT: Just one second. Mr. Keefe, did you lose  
24 something?

25 MR. KEEFE: I think I misplaced a hat somewhere, your

1 Honor.

2 THE COURT: What's it look like?

3 MR. KEEFE: It's just a black hat.

4 THE COURT: If we find it, we'll know who it belongs  
5 to.

6 MR. KEEFE: Your Honor, in my condition, I need it.  
7 It must be out in the hall. Thank you, Judge.

8 MR. MANGI: So as I was saying your Honor, these are  
9 very specific documents that we've asked for. There's no  
10 burden issue, but yet, Health Net has refused to produce them  
11 and has provided no reason for their refusal to do so. They're  
12 specific additional issues raised in Health Net's papers but  
13 I'll address them if counsel raises them today.

14 Thank you, your Honor.

15 THE COURT: All right. Your brother makes it sound  
16 very simple.

17 MR. MCGINTY: It always is at first look. One thing  
18 that counsel for the defendants I think has omitted to discuss  
19 is the significant threshold issue about whether this Court  
20 even has jurisdiction over this particular subpoena. As noted  
21 in the papers, admitted by the defendants, there is a conflict  
22 between various courts as to the scope of 28 U.S.C. Section  
23 1407 and whether or not that empowers this court as the  
24 transferee court in an MBL proceeding to consider matters  
25 concerning the enforcement of a subpoena under Rule 45. It's